

CERTIFIED MAIL

JUL 16 1992

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code and have determined that you do not qualify for tax exemption under that section. Our reasons for this conclusion and the facts on which it is based are explained below.

The information submitted indicates that you were incorporated on [REDACTED], under the non-profit laws of the State of [REDACTED]. The purposes for which you were formed are "... to further and promote community welfare of the property owners in the subdivision and to provide for the improvement, maintenance, preservation and control of all common areas, as may be permitted or authorized by law, within [REDACTED], and to promote the health, safety and welfare of the owners of the real estate within the subdivision..."

The common area consists of "... an open grass area with some trees. It is approximately [REDACTED] acres in size." "The deed to the common area is contingent on settlement of an estate. The association is fulfilling the stipulations of the estate which must be met to receive clear title to the common area property." "The area controlled by [REDACTED] is a common area within the [REDACTED] sub-division."

Your Articles of Incorporation provide that "Every person or entity who enters into an agreement to purchase or who is a record owner of a fee, or undivided fee, interest in any lot which is subject by covenants of record to assessment by the Association shall be entitled to membership in the Association." The association's membership is limited to property owners within fully developed residential plot, and it does not seek additional members.

Your income is derived from membership dues and gross investment income. Each member is obligated to pay to the Association annual and special assessments which are secured by a continuing lien upon the property against which the assessment is made.

Code	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
Surname	[REDACTED]	[REDACTED]	[REDACTED]				
Date	7-16-92	7/16/92	7/16/92				

[REDACTED]

Your expenses include mowing of the grass, payments of electric for common area streetlights, payments of premium liability insurance, payments of property taxes, and maintenance of [REDACTED] and volley ball court.

The activities conducted by the organization consist of annual neighborhood clean ups, holiday light displays, maintenance and improvement of pathways, picnic tables, volley ball court, area storage shed, and common area.

Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations organized and operated exclusively for charitable, religious, scientific, literary or educational purposes, or to foster national or international amateur competition, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual. A shareholder refers to anyone having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that to be exempt, an organization must be both organized and operated exclusively for one or more exempt purposes. If an organization fails to meet either the organizational or operational test, it is not exempt.

The organization does not meet the organizational test of section 501(c)(3) because its purposes are not exclusively within the intendment of section 501(c)(3) and its assets are not dedicated to section 501(c)(3) purposes.

Section 1.501(c)(3)-1(c)(2) of the Regulations provides, in part, that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Section 1.501(c)(3)-1(d)(ii) of the Regulations provides that an organization is not organized and operated exclusively for one or more purposes specified in section 501(c)(3) unless it serves a public rather than private interest. Thus, to meet the requirements of section 501(c)(3), it is necessary for an organization to establish that it is not organized or operated for the benefit to private interests such as designated individuals.

Thus to meet the requirement of this subparagraph, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests. Moreover, even though an organization may have exempt purposes, it will not be considered as operating exclusively for such purposes if more than an insubstantial part of its activities serve a private interest.

[REDACTED]

In Better Business Bureau v. U.S. 326 U.S. 279 (1945), C.T.D. 1950, 1945 C.B. 375, the Supreme Court stated that the presence of even a single, non-exempt purpose, if more than insubstantial in nature, will defeat exemption, under Code section 501(c)(3), regardless of the number or importance of truly exempt purposes.

It is therefore concluded that the primary purpose of your organization is to serve the interests of your members. Since you are serving the private interests of your members you do not meet the requirements of being organized and operated exclusively for the purposes as listed in section 501(c)(3) of the Code.

Until you have established exempt status, you are not relieved of the requirement for filing federal income tax returns.

Section 528 of the Internal Revenue Code which was added by the Tax Reform Act of 1976, provides that, in certain circumstances, a non-exempt homeowners association may elect not to be taxed on its "exempt function income which includes membership dues, fees or assessments from owners of real property. The election is made by filing Form 1120H.

If you do not agree with our determination, you may request consideration of this matter by the Office of Regional Director of Appeals. To do this, you should file a written appeal as explained in the enclosed Publication 892. Your appeal should give the facts, law and any other information to support your position. If you want a hearing, please request it when you file your appeal and you will be contacted to arrange a date. The hearing may be held at the regional office, or if you request, at any mutually convenient district office. If you will be represented by someone who is not one of your principal officers, that person will need to file a power of attorney or tax information authorization with us.

If you do not appeal this determination within 30 days from the date of this letter, as explained in Publication 892, this letter will become our final determination on this matter. Further, if you do not appeal this determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that "A declaratory judgment or decree under this section shall be issued in any proceeding unless the Tax court, the Claims court, or the district court or the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

Sincerely yours,

[REDACTED]
[REDACTED]
District Director

Enclosure: 892

cc: [REDACTED]